

ORIGINAL

BEFORE THE

Federal Communications Commission

RECEIVED

WASHINGTON, D.C.

SEP 24 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(East Wenatchee, Ephrata and)

Chelan, Washington))

MM Docket No. 93-221

RM-8265

To: The Chief, Allocations Branch

**COMMENTS ON
NOTICE OF PROPOSED RULE
MAKING AND COUNTERPROPOSAL**

KSEM, Inc., the licensee of Station KDRM(FM), Channel 257A, Moses Lake, Washington, hereby submits its Comments and Counterproposal in the above-referenced rule making proceeding.^{1/}

1. The Notice of Proposed Rule Making and Order to Show Cause (hereinafter, "NPRM"), in this proceeding was issued in response to a petition for rule making filed by Hartline Broadcasters ("Hartline") on May 27, 1993, which proposed the addition of Channel 229C2 to East Wenatchee, Washington. In order to make this allotment, Hartline contended that it was necessary to delete the vacant Channel 230C2 at Ephrata, Washington and to substitute Channel 238A for Channel 228A at

^{1/} This pleading is timely filed on the Comment date set forth in the Commission's Notice of Proposed Rule Making.

No. of Copies rec'd 045
List ABCDE

14

Chelan, Washington with a modification of the operation of KOZI-FM, Chelan, Washington to specify operation on Channel 238A.

2. The NPRM, which was adopted on July 21, 1993 and released on August 4, 1993, noted that there had been no expression of interest in vacant Channel 230C2 at Ephrata and proposed the deletion of that channel in accordance with Hartline's request if no applications were filed by the comment date in this proceeding. The NPRM also proposed the allotment of Channel 228C2 at East Wenatchee as proposed by Hartline and the substitution of Channel 238A for Channel 228A at Chelan.^{2/}

3. Based on the NPRM and the Commission's database, KSEM, Inc.'s consulting engineer prepared the attached Counterproposal which proposes to delete Channel 230C2 from Ephrata, Washington as set forth in the NPRM, to allot Channel 230C3 to Moses Lake, Washington in place of Channel 257A and to modify the license of Station KDRM(FM), Moses Lake, to specify operation on Channel 230C3. KSEM, Inc. intends to promptly apply for a permit specifying Channel 230C3 at Moses Lake and, after grant of a permit, KSEM, Inc. intends to construct, operate and seek a license for the improved facility.

4. In order to effectuate KSEM, Inc.'s Counterproposal, Channel 230C2 should be deleted from Ephrata as proposed in the Commission's NPRM and Channel 229 should be allotted to Cle Elum, Washington as a Class C3 station instead of to East Wenatchee,

^{2/} No action was proposed with respect to Channel 222C2 at Ephrata because the licensee of Station KULE-FM, Channel 240A, filed a Form 301 application to upgrade to Class C2 facilities at Ephrata on June 7, 1993.

Washington as a Class C2. Ephrata will still have Channel 222C2 and East Wenatchee will still have Channel 266A.

5. This Counterproposal will better serve the public interest than Hartline's proposal. The FCC evaluates allotment proposals according to the following priorities:

- (1) first full-time aural service;
- (2) second full-time aural service;
- (3) first local service; and
- (4) other public-interest matters.

Revision of FM Assignment Policies and Procedures, 90 FCC2d 88, 91-92 (1982).

6. When these standards are considered, it is clear that KSEM, Inc.'s Counterproposal should be preferred to Hartline's proposal. Hartline's proposal will result only in providing East Wenatchee with a second local FM transmission service. On the other hand, KSEM, Inc.'s proposal will result in providing Cle Elum with first local service. Thus, KSEM's proposal is preferable under priority (3). Cle Elum is an incorporated community with a population of approximately 3,000. Cle Elum is in a mountainous area and cannot receive many outside radio signals. In addition, the KSEM, Inc. Counterproposal will provide other public interest benefits under priority (4) through the upgrade of Station KDRM(FM) at Moses Lake. KDRM(FM) will be able to expand its service area to include the communities of Othello, Soap Lake, Wilson Creek and Coulee City.

7. Moreover, Commission records reflect that Hartline's proposal is seriously suspect. After KSEM's Inc.'s engineering study was prepared, counsel for KSEM, Inc. discovered that Hartline's counsel filed an application for Channel 230C2 at Ephrata, Washington -- the very channel that Hartline has requested to be deleted. The application was filed on behalf of TRMR, Inc., which is owned by Thomas W. Read and his wife Melinda Boucher Read, on July 21, 1993 -- the very day the instant NPRM was adopted. It is well known in Washington State that Hartline is Tom Read. Mr. Read has used the name Hartline previously and he has admitted to various persons that he caused the Hartline petition for rulemaking to be filed. Moreover, counsel for Hartline has a terrible conflict of interest if he is on the one hand requesting the deletion of vacant Channel 230C2 from Ephrata, Washington on behalf of Hartline and on the other hand prosecuting an application for Channel 230C2 at Ephrata on behalf of TRMR, Inc. unless Hartline and TRMR, Inc. are one and the same and have the same objectives -- namely to block a counterproposal and then dismiss the Ephrata application. Hartline should not be permitted to block a counterproposal in order to safeguard its petition for rule making. Thus, Hartline's petition must be dismissed or denied.

Accordingly, for the reasons set forth herein, the Commission should deny Hartline's petition for rule making and grant the KSEM, Inc. counterproposal advanced herein.

Respectfully submitted,

KSEM, INC.

By: 
Richard R. Zaragoza
Kathryn R. Schmeltzer

Its Attorneys

FISHER, WAYLAND, COOPER
AND LEADER
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

Dated: September 24, 1993

4745-000.K03

ENGINEERING EXHIBITS

ENGINEERING EXHIBITS

A REQUEST TO AMEND SECTION
73.202, FOR ALLOCATION OF
FM CHANNEL 230C3 TO
Moses Lake, Washington

APPLICANT:
KSEM, Inc.
Moses Lake, Washington

KENNETH WILLIAMS, Jr., P.E.
CONSULTING ENGINEER

P.O. BOX 7703
TACOMA, WA 98407

(206) 756-7544

PROPOSED CHANGES TO TABLE OF ALLOTMENTS

RM 8265 pertains to a request by Hartline Broadcasters to allot Channel 229C2 to East Wenatchee, Washington (See Figure 1, *[1]). Figure 1, *[3] also shows that in the same rulemaking the Commission has proposed to delete Channel 230C2 from Ephrata, Washington. See Figure 1, *[2]. KSEM, Inc. request that Channel 229C2 be allotted to Moses Lake, Washington as a Class C3 channel and to accommodate this allotment, that Channel 229C2 be allotted to Cle Elum, Washington as a Class C3 channel. Channel 222C2 would continue to serve Ephrata.

KSEM, Inc. request that Channel 230C2 be deleted from Ephrata and allotted to Moses Lake at the coordinates of N. 47° 06' 04", W. 119° 19' 59". Channel 229C3 can be allotted to Cle Elum, Washington at N.47° 10' 30", W.120° 46' 00".

With these changes, the distance between Channel 229C3 at Cle Elum and Channel 230C3 at Moses Lake is 109 km. This is greater by 10 km than the required minimum of 99 km for C3 class stations.

With the transmitter site coordinates shown above, each community is well within the 3.16 mV/m contour and there are no obstructions between the transmitter site and community of license.

The following pages contain figures and exhibits in support of this counterproposal to RM 8265 (MM Docket No. 93-221).

ENGINEERING STATEMENT IN SUPPORT OF
COUNTERPROPOSAL OF KSEM, Inc.

The following Engineering Statement is being filed on behalf of KSEM, Inc., the licensee of Station KDRM(FM), Channel 257A, Moses Lake, Washington, as a Counterproposal to the Commission's Notice of Proposed Rule Making in MM Docket No. 93-221. KSEM, Inc. request the Commission to delete Channel 230C2 from Ephrata, Washington as proposed in MM Docket No. 93-221, to allot Channel 230C3 to Moses Lake, Washington in place of Channel 257A and to modify the license of Station KDRM(FM) to specify operation on channel 230C3. To accommodate the allotment of Channel 230C3 at Moses Lake, KSEM, Inc. request that Channel 229C3 be allotted to Cle Elum, Washington.

After the changes proposed herein, Channel 230C3 will not be in conflict with the remaining presently assigned or allotted channels. The operation proposed herein will not cause short spacing to U.S. or Canadian stations, thus permitting the changes in the FM Table of Allotments.

THE PROPOSED CHANGES IN THE RULES ARE:

Moses Lake, Washington	
Existing	Proposed
257A, 262C1	230C3, 262C1
Ephrata, Washington	
Existing	Proposed
222C2, 230C2	222C2
Existing	Proposed
-----	229C3

All distance figures used in this report are metric and distance calculations were made using methods specified in Section 73.208 of the FCC Rules.

After the channel changes for Channel 229C3 and 230C3, spacing are then within the Commissions's current minimum separation requirements at the petitioner's proposed transmitter site.

Consideration of the 10.6-10.8 Mhz spacings are shown on Figure No. 2. No short spacing results.

FIGURE No. 1

CLASS C3 FM CHANNEL STUDY
 ** CHANNEL 230 **

REFERENCE SITE - Moses Lake, WA

N. 47 6 4 W. 119 19 59

CHANNEL CALL & CLASS STATUS		Owner/Applicant CITY STATE FILE No.	(m) (kw) (m) Horz->AHAAT/ERP/AMSL Vert->AHAAT/ERP/AMSL	LATITUDE LONGITUDE	AZIMUTH [MARGIN]	DIST. (km)
93.3 Mhz. Cook Inlet Radio License Partnership, L.P.						
227 C	KUBE	Seattle	393 99. 518	47-32-39	283.2	215.4
FM	LIC	WA BLH 831004AF	393 99. 518	122- 6-29	119.4 KM	CLEAR
93.3 Mhz.						
227 A	NEW	Christina Lake	-244 .088	49- 0-28	22.0	228.7
FM		BC		118-10-57	174.7 KM	CLEAR
93.3 Mhz. Comcast Media Services, Inc.						
227 C1	KTELFM	Walla Walla	420 42. 1163	45-59-19	144.3	152.2
FM	LIC	WA BLH 911202KA	420 42. 1163	118-10-28	76.2 KM	CLEAR
93.5 Mhz. Hartline Broadcasters						
228 A		Chelan		47-51- 7	334.1	92.8
FR	DEL	WA RM 8265		119-52-18	50.8 KM	CLEAR
93.5 Mhz. The Northcentral B/Cting Company						
228 A	KOZIFM	Chelan	317 .590 986	47-51- 7	334.1	92.8
FM	LIC	WA BMLH 910204KE	317 .590 986	119-52-18	50.8 KM	CLEAR
93.7 Mhz. Price Broadcasting Company						
229 C	KDRKFM	Spokane	725 56. 1573	47-34-13	72.9	177.7
FM	LIC	WA BLH 7372	725 56. 1573	117- 5- 0	1.7 KM	CLEAR
93.7 Mhz.						
229 B	CBTPFM	Penticton	225 1.85	49-31-44	355.2	270.9
FM		BC		119-38-25	121.9 KM	CLEAR
93.7 Mhz. Hartline Broadcasters						
229 C2		East Wenatchee		47-25-18	294.2	86.9
FR	ADD	WA RM 8265		120-22-53	-30.1 KM	SHORT *[1]
93.9 Mhz.						
230 C2		Ephrata		47-13-16	313.3	19.5
FA	VACA	WA		119-31-12	-157.5 KM	SHORT *[2]
93.9 Mhz. Hartline Broadcasters						
230 C2		Ephrata		47-13-16	313.3	19.5
FR	DEL	WA RM 8265		119-31-12	-157.5 KM	SHORT *[3]
94.1 Mhz. Clarkston Broadcasters, Inc.						
231 C	KCLKFM	Clarkston	376 100. 969	46-27-27	112.8	184.8
FM	LIC	WA BLH 831227AC	376 100. 969	117- 6- 3	8.8 KM	CLEAR

FIGURE No. 1 Cont.

C3 CHANNEL STUDY

```

=====
CHANNEL CALL      Owner/Applicant      (m) (kw) (m)      (deg) (km)
& CLASS STATUS  CITY      Horz->AHAAT/ERP/AMSL  LATITUDE  AZIMUTH  DIST.
                STATE FILE No. Vert->AHAAT/ERP/AMSL  LONGITUDE [ MARGIN ]
=====
    94.1 Mhz. Professional Broadcasting, Incorporated
231 C  KMPSFM Seattle      714 57. 940  47-30-14  282.6  204.6
    FM  LIC  WA      BLH 890912KB  714 57. 940  121-58-29  28.6 KM CLEAR

    94.1 Mhz.
231 A  CBYRFM Rock Creek      10 .040      49- 2-28   6.7  217.2
    FM      BC      10 .040      118-59-28  104.2 KM CLEAR

    94.1 Mhz.
231 A      Salmo      49-11-50   33.2  278.4
    FA      BC      117-17- 4  165.4 KM CLEAR

    94.5 Mhz. Goetz Enterprises, Inc.
233 C1 KATS Yakima      277 100. 631  46-31-59  234.7  109.4
    FM  LIC  WA      BLH 840625CS  277 100. 631  120-30-14  33.4 KM CLEAR

    94.5 Mhz.
233 B      Penticton      49-31-44  355.2  270.9
    FA      BC      119-38-25  199.9 KM CLEAR

    94.5 Mhz. North Idaho Broadcasting Company
233 C  KKCH Hayden      574 100. 1384  47-39-34  70.9  189.3
    FM  CP  ID      BPH 920228IF  574 100. 1384  116-57-48  93.3 KM CLEAR

    94.5 Mhz. North Idaho Broadcasting Company
233 A  KKCH Hayden      470 0.23 1269  47-43-54  70.3  208.4
    FM  CP M ID      BMPH 891004IB  470 0.23 1269  116-43-48  166.4 KM CLEAR

```

>>>>> END OF CHANNEL 230 SEARCH <<<<<

FIGURE No. 2

10.6-10.8 mHz CHANNEL SPACINGS

FM WITHIN 250 km

** CHANNELS 283 TO 284 **

REFERENCE SITE - Moses Lake, WA

N. 47 6 4 W. 119 19 59

CHANNEL CALL & CLASS STATUS		Owner/Applicant	CITY	Horz->AHAAT/ERP/AMSL	Vert->AHAAT/ERP/AMSL	LATITUDE	(deg)	(km)
		STATE	FILE No.			LONGITUDE	AZIMUTH	DIST
104.5 Mhz.		Mercer Island School District #400						
283 D	KMIH	Mercer Island		71	.014	134	47-34-19	283.5
FM	CP	WA	BPED 920602MA			122-12-55		223.9
104.5 Mhz.		Mid Columbia Broadcasting, Inc.						
283 C	KMOQ	The Dalles		610	100.	998	45-42-41	221.6
FM	LIC	OR	BLH 850916KS	610	100.	998	121- 7- 7	206.6
104.7 Mhz.		Sunbrook Communications Corporation						
284 A	KEEH	Spokane		420	0.32	1138	47-34-45	70.9
FM	CP M	WA	BMPH 911031IM	420	0.32	1138	117-17-48	162.7

>> END OF FM WITHIN 250 km STUDY <<



FIGURE No. 3

MAP SHOWING TRANSMITTER SITE
WITH RESPECT TO CITY OF LICENSE

CONTOUR INTERVAL 200 FEET

WITH SUPPLEMENTARY CONTOURS AT 100 FOOT INTERVALS

ENGINEERS CERTIFICATION

STATE OF WASHINGTON)

) ss

COUNTY OF PIERCE)

Kenneth Williams, Jr., P.E., being duly sworn on his oath, states that he is an experienced and qualified Radio Engineer, licensed as a Registered Professional Electrical Engineer in the States of Washington and Oregon and as such maintains an office for the practice of Electrical and Communications Engineering. Having been in continuous practice as a Consulting Engineer for over 30 years, his qualifications are thus a matter of record with the Federal Communications Commission and the Federal Aviation Administration.

The Engineering data herein, was prepared by him or under his direct supervision and all representation of fact contained in said report is based on affiants measurements, information and belief and he believes all such statements herein to be true and correct.



Kenneth Williams, Jr., P.E.
(Kenneth Williams, Jr., P.E.)
(affiant)

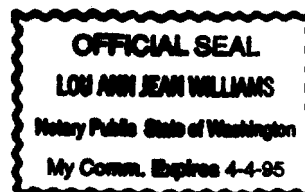
ENGINEERS STATE SEAL

EXPIRES: 7-15-95

Sworn to before me, Lou Ann Jean Williams a
Notary Public of Tacoma, Washington, on this 17th
day of September, 1993.

My Commission Expires April 4, 1995.

NOTARY STATE SEAL:



CERTIFICATE OF SERVICE

I, SYBIL R. BRIGGS, do hereby certify that I have this 24th day of September, 1993, mailed by first class United States mail, postage prepaid, copies of the foregoing "COMMENTS ON NOTICE OF PROPOSED RULE MAKING AND COUNTERPROPOSAL" to the following:

*Michael C. Ruger, Esq.
Chief, Allocations Branch
Federal Communications Commission
Policy & Rules Division
Mass Media Bureau
2025 M Street, N.W.
Room 8322
Washington, D.C. 20554

John F. Garziglia, Esq.
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
Counsel for Hartline Broadcasters
and Counsel for TRMR, Inc.

Melodie Virtue, Esq.
Haley, Bader & Potts
4350 N. Fairfax Drive
Suite 900
Arlington, Virginia 22203-1633
Counsel for Northcentral Broadcasting


Sybil R. Briggs

*By Hand Delivery

4745-000.K03